GRANT ACCEPTANCE AGREEMENT

Between BXP Embarcadero Plaza LP, the Downtown San Francisco Partnership,
the San Francisco Recreation and Park Department, and the
San Francisco Office of Economic and Workforce Development
regarding a park renovation at Embarcadero Plaza

This Grant Acceptance Agreement (this "**Agreement**"), dated _____, 2024 is entered into by and between BXP Embarcadero Plaza LP (**"BXPE"**); Downtown Community Benefit District, a California nonprofit public benefit corporation dba Downtown San Francisco Partnership ("**DSFP**"); and the City and County of San Francisco ("**City**") acting through its Recreation and Park Department ("**RPD**") and its Office of Economic and Workforce Development (**"OEWD"**), all collectively referred to herein as the "**Parties**."

RECITALS

WHEREAS, RPD operates and maintains certain real property owned by the City that is commonly referred to as Embarcadero Plaza and Sue Bierman Park (collectively, the "**Park**"), located on the western side along the Embarcadero between Washington Street and Market Street in San Francisco, California, and seeks to activate the public spaces it manages for the well-being of everyone in San Francisco's diverse community; and

WHEREAS, OEWD is a San Francisco City Agency that strives to create a thriving and resilient economy, where barriers to economic and workforce opportunities are removed, and prosperity is shared equitably by all; and

WHEREAS, BXPE is an affiliate of One Embarcadero Center Venture, Embarcadero Center Associates, Three Embarcadero Center Venture and Four Embarcadero Center Venture, which entities own the commercial office buildings commonly known as One Embarcadero Center, Two Embarcadero Center, Three Embarcadero Center, and Four Embarcadero Center, respectively, consisting of approximately 3.3 million square feet of commercial office and retail space in the aggregate (collectively, "**Embarcadero Center**"); and

WHEREAS, DSFP is a community benefit district working to enhance the downtown core, the traditional Financial District and historic Jackson Square through public/private partnerships, placemaking, activating the public realm, clean and safe operations, marketing support, economic development and shall serve as the fiscal sponsor for the Project; and

WHEREAS, BXPE has approached OEWD and RPD with a potential Project to renovate the Park (the "**Project**"), and has proposed to support the design phase of the Project through a cash grant of up to $200,000 to fund certain project management services (**"BXPE Cash Grant"**), and an in-kind grant of additional professional services valued up to $2,300,000 (**"BXPE In-Kind Grant"**); and

WHEREAS, the preliminary design for the Project attached as Exhibit A (the "**Preliminary Design**") has undergone a preliminary review by RPD and is consistent with the goals and objectives of RPD to create an activated public open space; and

WHEREAS, the Parties intend to use the Preliminary Design to develop and execute a public outreach and community engagement plan and shall secure other required approvals, subject to environmental review, to develop a "**Concept Plan**" for the Project, which shall be subject to Recreation and Park Commission **"Commission"** approval; and

WHEREAS, RPD will work to secure $15 million to $20 million of public funding for the construction of the Project ("**Public Funding**"), and DSFP may attempt to raise approximately $10,000,000 in additional third-party philanthropic dollars ("**Campaign Funds**"), to be granted for the Project subject to the terms and conditions of this Agreement; and

WHEREAS, separate from the above Grants for the Project, BXPE also intends to incur approximately $2,500,000 to construct at its own cost an approximately 1,250 square foot restroom facility in a vacant retail suite on the ground level of Four Embarcadero Center, which BXP shall operate and generally keep open for public use to support the adjacent park; and

WHEREAS, on _____ , the Board of Supervisors on recommendation of the Recreation and Park Commission (RPC Resolution No. ____) adopted Board Resolution No. _____, to approve this Grant Agreement and to authorize RPD to accept the above Grants]; and

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by the Parties and (the "**Effective Date**"), the Parties agree as follows:

1. Term. This Agreement shall become effective upon full execution and delivery hereof by the Parties. This Agreement shall expire once the Grants have been expended and the Project is complete, or upon termination of this Agreement as set forth herein.

2. Project Governance. Consistent with its responsibility under Charter Section 4.113 to manage all park property, RPD shall have final decision-making power regarding the use of the Park. Subject to the foregoing, a Project Governance Team consisting of one representative from each of RPD, OEWD, BXPE, and DSFP shall strive to reach consensus when making decisions on how to complete the Project.

3. Project Budget and Schedule. The Parties intend to complete a project based on the Preliminary Design, in accordance with the attached **"Preliminary Budget"** (Exhibit B) and "**Preliminary Schedule**" (Exhibit C). If the Commission approves a Concept Plan, the Project Governance Team will within 30 days of said approval jointly update these exhibits and prepare an "**Approved Project Schedule"** and "**Approved Project Budget**". RPD will then work to secure Public Funding with cooperation from the other Parties, and DSFP shall endeavor to raise the Campaign Funds with cooperation from the other Parties, subject to all City rules. The Project construction shall be contingent upon RPD confirming that the Parties have obtained all

necessary funding for the Project, along with all required approvals. The Project Governance Team shall periodically review the Approved Project Budget and Approved Project Schedule and may update them from time to time in writing. No party shall be obligated to make up any funding shortfall, unless expressly agreed to by such party in writing. Further, this Agreement does not require DSFP to use any of DSFP's assets and/or property assessment funds on the Project or to fund the Campaign.

In addition, this Agreement is subject to the budget and fiscal provisions of the City's Charter. If funds required for any of City's or RPD's responsibilities under this Agreement are not appropriated for any portion of a fiscal year, then City may immediately terminate this Agreement without penalty, liability, or expense of any kind by written notice to BXPE and DSFP. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. BXPE's and DSFP's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

4. BXPE Grants. BXPE shall provide the following grants to support the Project, consistent with the Approved Project Budget and subject to the following requirements:

4.1 BXPE Cash Grant and Campaign Seed Funding.

a. **Campaign Seed Funding.** BXPE shall provide initial funding of $50,000 to assist with the Campaign within 30 days after the Commission approves a Concept Plan, or earlier if mutually agreed by the Parties. BXPE shall be entitled to reimbursement of the Campaign Seed Funding from the Campaign Funds as set forth in Section 5.c, and may reduce the In-Kind Grant in Section 4.2 accordingly in the event said reimbursement does not occur.

b. **BXPE Cash Grant to RPD.** BXPE shall provide RPD the BXPE Cash Grant **of** $200,000 to help pay for the services of RPD's project management team (collectively, the "**RPD Project Manager**") through the design phase of the Project. BXPE shall provide the first $100,000 within 30 days after execution of this Agreement, and the remaining $100,000 within 30 days after the Commission approves a Concept Plan.

4.2 BXP In-Kind Grant – Design Services.

a. **Project Management.** Commencing 30 days after the execution of this agreement, BXPE shall at its own cost engage the services of HOK Architects ("**Architect**") and other consultants as needed to assist with the development of a Concept Plan including supporting the community outreach process. Also at this time BXPE shall have the right, but no obligation, to assign a project manager to coordinate and oversee design and construction in conjunction with the RPD Project Manager. If BXPE elects not to assign a project manager, it shall provide the RPD Project Manager with a day-to-day point of contact with capital project design and construction experience. BXPE shall be entitled to reimbursement for these services out of

the Campaign Funds, in an amount equal to 2% of the design and construction costs set forth in the Approved Project Budget.

b. **Architect and other Consultants.** Commencing 30 days after the resolution of environmental review for the Project, BXPE shall at its own cost engage the services of HOK Architects to begin schematic design, and may engage engineering professionals and other design and construction professionals in consultation with RPD (e.g., independent construction management services, inspection and building commissioning services) – all collectively "**Consultants**" – to perform architecture and landscape design services for the Project. Specifically, BXPE shall (1) cause the Consultants to prepare "**Project Documents**" based on the Approved Project Schedule and Budget; and (2) provide support services through the completion of construction ("**Construction Administration**"). BXPE's contract with the Consultants shall also include the terms and conditions listed in Exhibit D, attached. BXPE shall have no obligation to provide any project management services relating to environmental review but will ensure that Consultants will assist the environmental review process in the form of design information, documentation, and exhibits.

c. **Project Documents.** The Project Documents shall bear the stamp and signature of the licensed design professional and shall be submitted to RPD for review along with all necessary construction specifications prior to planned advertisement for bids for the construction of the Project. These reviews will include conceptual plan review and the Parties shall strive to complete the documents with no more than three (3) RPD review periods when the documents are 30%, 60% and 90% complete, typically aligned with Schematic Design, Design Development and Construction Documentation. BXPE and its Consultants shall also provide professionally developed cost estimates at these milestones and shall work with the RPD Project Manager on all other required City and other reviews. BXPE shall provide all Project Documents to RPD in digital format, which includes CADD files of the final construction documents. RPD shall have a non-exclusive license to use all Project Documents and any necessary drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, construction documents and/or designs developed for the Project to construct the Project.

d. **Permit to Enter**. If required in connection with any of the professional design services described above, RPD authorizes BXPE and/or the Consultants to enter the property to perform surveying, measurements, and other activities as needed subject to terms agreed upon in advance by the Parties.

5. DSFP Grants.

a. **Campaign Funds.** Following environmental review and approval of the Concept Plan, DSFP shall endeavor to raise and collect third-party donations, funds, contributions and grants in the form of cash, in-kind services and materials ("**Campaign Funds**"), to cover Project costs to the extent not covered by the BXPE Cash Grant and Public Funding, as set forth in the Approved Project Budget. DSFP's Campaign expenditures and fundraising materials shall be subject to prior approval (not to be unreasonably withheld) of the Project Governance Team. If

DSFP collects any Campaign Funds, DSFP shall accept and track all Campaign Funds and shall provide RPD monthly updates on Campaign revenue, expenses, and balances.

b. **Administrative Expenses.** The Parties acknowledge that DSFP may use a portion of the funds it raises to fund its own administrative expenses. The parties agree that DSFP may retain at least 5% of any Campaign Funds to cover its administrative expenses, and that DSFP may be reimbursed up to an additional 5% for Campaign expenses approved by the Project Governance Team ("**Campaign Costs**"). DSFP shall disclose the administrative expense deductions and BXPE project management fee described in Section 4.2(a) to all potential donors to the Campaign. Campaign Costs are subject to audit by the City as provided in this Agreement.

c. **Use of Grant Funds.** In consultation with the Project Governance Team, RPD shall monitor the Project Budget and shall inform the Parties upon determining that the Public Funding and Campaign Funds (net of the percentages reserved to cover Campaign Costs) will be sufficient to complete the Project. If RPD determines that the Project will proceed, then DSFP shall disburse the Campaign Funds (net of administrative fees) as set forth in the Approved Project Budget, first to (i) reimburse BXPE for the Campaign Seed Funding as described in Section 4.1(a); and second to (ii) cover the remaining costs of constructing the Project up to the amount of available Campaign funds (including the 2% BXPE project management fee described in Section 4.2(a)). The parties will attempt to expend the Public Funding first, before expending the Campaign Funds. If any Campaign Funds remain after completion of the Project, the parties will develop a mutually agreeable plan to use any unexpended Campaign Funds to fund future maintenance projects in the Park. Alternatively, in the unlikely event RPD determines it is necessary to abandon the Project due to a lack of funding, DSFP will return any remaining unexpended Campaign Funds to its donors, net of BXPE's Campaign Seed Funding which shall reimbursed to BXPE prior to returning Campaign Funds to its donors.

d. **Project Delivery.** RPD shall retain discretion and control over the selection of any contractors or other parties it retains with the Campaign Funds, and over the completion of the Project, in accordance with standard City practices. Alternatively, upon mutual agreement of the parties and subject to RPD's approval of an appropriate scope of work, DSFP may disburse Campaign Funds to BXPE so that BXPE can retain a contractor to complete the Project, under terms substantially similar to the draft terms outlined in Exhibit E.

6. RPD Responsibilities.

a. Participate in regularly scheduled project delivery meetings with BXPE's Project Manager, if any, and Architect, and other Consultants, as needed.

b. Facilitate community meetings and use social media, postings, printed reports and other methods as appropriate to familiarize and engage the public with the Project.

c. Using best efforts, endeavor to secure Public Funding for construction of the Project within two years after resolution of environmental review for the Project.

d. Assist DSFP with private fundraising efforts, as allowed by law.

e. Coordinate necessary reviews and approvals for the design, permitting, and construction of the Project, including but not limited to environmental review, compliance with disability access laws, stormwater management ordinance compliance, hazardous materials inspections and monitoring, and geotechnical investigations and reports.

f. Subject to the receipt of Public Funding and Campaign Funds, provide for the administration of a formal construction contract by the City's Department of Public Works, in conformance with City requirements, to complete the Project.

g. Serve on Project Governance Team with other parties, and keep the rest of the Project Governance Team informed regarding the design and construction of the Project. RPD shall maintain accurate accounting records related to its expenditures on the Project, and will keep such records for at least two years after Project completion.

h. Present a mutually agreed upon naming and/or donor recognition program to the Recreation and Park Commission for approval as required to comply with the Commission's naming and gift policies.

i. Maintain the completed Park in good condition consistent with RPD's prevailing maintenance practices. While the City may, in the future and at its sole discretion, modify Project improvements as it deems necessary for the health, safety or enjoyment of Park visitors, the improvements are intended to remain at the Park for their useful life. Should BXPE desire to supplement RPD maintenance, it may work with RPD staff to provide additional security and janitorial services for the Park at its own cost.

7. OEWD Responsibilities.

a. Assist DSFP with private fundraising efforts, and support DSFP in exploring potential public funding mechanisms, as allowed by law.

b. Support RPD in obtaining all required governmental approvals for the Project.

c. Serve on Project Governance Team with other parties.

8. Indemnification. BXPE shall defend, indemnify, and save harmless DSFP and the City, and their respective officers, agents and employees from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of any person, including their respective officers, directors, employees and agents, or loss of or damage to property, resulting directly or indirectly from BXPE's own activities in connection with this Agreement, except and to the extent where such loss, damage, injury, liability or claim is the result of the sole negligence or intentional or willful misconduct of DSFP or the City, and/or their officers, agents or employees.

DSFP shall defend, indemnify, and save harmless the City and BXPE, and their respective officers, agents and employees from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of any person, including their respective officers, directors, employees and agents, or loss of or damage to property, resulting directly or indirectly from DSFP's own activities in connection with this Agreement, except and to the extent where such loss, damage, injury, liability or claim is the result of the sole negligence or intentional or willful misconduct of BXPE or the City, and/or their respective officers, agents or employees.

City agrees to defend, indemnify and hold harmless each of BXPE and DSFP, including their respective officers, directors, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of City, its officers, employees and agents in connection with this Agreement, including without limitation claims related to the adequacy of environmental review, except to the extent arising by reason of the sole negligence or intentional or willful misconduct of BXPE and/or DSFP including their respective officers, directors, employees and agents.

In the event of concurrent negligence, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence.

9. Insurance. Each of BXPE and DSFP shall maintain, at all times during their respective activities in the Park pursuant to this Agreement, insurance as described in Exhibit F attached hereto that names the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, each of BXPE and DSFP, as applicable, shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease BXPE's or DSFP's respective indemnification obligations under this Agreement or any of such party's other obligations hereunder.

10. Communications. Each of BXPE and DSFP shall cooperate in good faith with the City and RPD on matters of public relations and media responses related to the Project and/or this Agreement. Any response to an inquiry by a news or community organization to any Party in reference to the Project shall include a recommendation to contact the other applicable Parties. No Party shall issue a press release in regard to this Agreement without prior approval from DSFP, BXPE and RPD. To facilitate the performance of this Section, the Parties have each designated spokesperson(s) listed below under "Contacts". Nothing in this Agreement shall prohibit any Party from discussing this Agreement in response to inquiries from the public or the press. At a time and in a format to be determined, the Parties may hold joint public ribbon cutting ceremonies at the completed sites and all Parties shall have a reasonable opportunity to participate at any such event. If any Party holds any other event solely or largely dedicated to

the Project such as a volunteer event, that Party shall notify the other Parties and all Parties shall have a reasonable opportunity to participate in any such event. Materials and collateral for the Project shall be approved by the Project Governance Executive Committee.

11. Contacts/Notices

RPD: 501 Stanyan Street, San Francisco, CA 94117

RPD Media and Public Relations	RPD Executive Lead	RPD Partnerships
Sarah Madland	Phil Ginsburg	Lisa Bransten
sarah.madland@sfgov.org	phil.ginsburg@sfgov.org	lisa.bransten@sfgov.org
415.831.2700	415.831.2700	415.831.2700

OEWD: 1 Carlton B. Goodlett Place, Rm. 448, San Francisco, CA 94102

OEWD Media Contact	OEWD Executive Lead	OEWD Development
Kate Patterson	Sarah Dennis-Phillips	Anne Taupier
kate.patterson@sfgov.org	sarah.dennis-phillips@sfgov.org	anne.taupier@sfgov.org
415-554-4669	415-554-7103	415-554-6969

BXPE: Two Embarcadero Center, Suite 300, San Francisco, CA 94111

Media Contact	BXPE Executive Lead
Laura Kerl	Aaron Fenton
lkerl@bxp.com	afenton@bxp.com
415-772-0700	415.772.0700

DSFP: 235 Montgomery Street, Suite 828, San Francisco, CA 94104

Media Contact	DSFP Executive Lead
	Robbie Silver
	rsilver@downtownsf.org
	415.634.2251

12. Sunshine Ordinance and Donor Disclosures. BXPE and DSFP understand and acknowledge that this Agreement, and any document between either of them and the City, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act. In addition, each of BXPE and DSFP agree if they engage in fundraising to disclose information regarding the amounts and sources of funding and donor financial interest information as set forth in Administrative Code Section 67.29-6, to provide a copy of all required

reports and disclosures to RPD, and to provide all information requested by RPD to enable RPD to comply with its disclosure obligations.

13. Termination; Survival. RPD may terminate the Agreement if it determines, in consultation with the Project Governance Team, that it is necessary to abandon the Project due to a lack of funding. Otherwise, no Party may be excused from performing under this Agreement unless there has been a material breach of this Agreement. The Party alleging breach must first provide written notice to all Parties of the alleged breach, and allow the other Parties a reasonable timeframe of at least 30 days to cure the alleged violation. However, all provisions regarding indemnification and insurance shall survive such termination.

14. Dispute Resolution. In the event of a dispute under this Agreement, the Party claiming default shall first provide the applicable Party (with a copy to the other parties) a written notice of default and a thirty (30) day opportunity to cure. If the dispute is not resolved within thirty (30) days or if the applicable Parties otherwise agree to waive the thirty (30) day cure period, the dispute shall proceed to non-binding mediation. If the dispute is not resolved within thirty (30) days of the mediation, the complaining Party may declare the applicable other Party in default. The Party claiming default shall then be entitled to exercise any right or remedy available at law or in equity which it may have by reason of such default including, but not limited to the right to monetary damages and specific performance to prevent or eliminate such default.

15. Conflicts of Interest. By executing this Agreement, each of BXPE and DSFP, but each only on its own behalf, certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article Ill, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement. For example, BXPE and/or DSFP, as applicable, will notify RPD if it becomes aware that any RPD employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest. In addition, the Parties agree and acknowledge that neither BXPE's nor DSFP's support of RPD, or lack thereof, shall have any bearing on and shall not be relevant towards any future contracting, leasing, or permitting decisions by City.

16. Miscellaneous.

a. **Entire Agreement.** This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

b. **Compliance with Applicable Laws.** All actions described herein are subject to and must be conducted and accomplished in accordance with the City's charter, its municipal code, and all applicable state and federal laws, building codes and regulations. BXPE and DSFP each

understands and agrees that RPD is entering into this agreement in its capacity as a property owner, and that nothing herein shall limit their respective obligations to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

c. **Approvals.** Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made by the General Manager of RPD or his or her designee in his or her sole and absolute discretion.

d. **Independent Relations.** Nothing herein contained shall be construed as creating the relationship of employer and employee between the City and either BXPE or DSFP or any of their respective agents or employees, nor between BXPE and DSFP. Each of BXPE and DSFP shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this Agreement. Each of BXPE and DSFP has and hereby retains the right to exercise full control and supervision of its duties and full control of employment, direction, compensation and discharge of all persons assisting it in the performance this Agreement. Each of BXPE and DSFP will be solely responsible for all matters relating to payment and employment of such Party's employees, including compliance with social security, withholding and all other regulations governing such matters. Nothing set forth in this Agreement shall be deemed to render the City a partner in either BXPE's or DSFP's business or operations, or a joint venture or member in any joint enterprise with BXPE and/or DSFP, as applicable. Notwithstanding anything to the contrary set forth in this Agreement, BXPE and DSFP are independent parties and in no event shall the actions of BXPE be construed to be the actions of DSFP, and vice versa.

e. **No Joint and Several Liability**. Notwithstanding anything to the contrary herein, (i) any and all representations, warranties, covenants and obligations of DSFP and BXPE are several and not joint, and in no event shall BXPE or DSFP (as applicable) have any responsibility or liability with respect to the acts or ommissions of the other Party, (ii) all rights of each or BXPE and DSFP are several and not joint, and in no event shall BXPE or DSFP (as applicable) have any interest with respect to a right of the other Party, (iii) in no event shall either BXPE or DSFP have any responsibility or liability to the other Party pursuant to this Agreement.

f. **No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against any of the Parties by any third person with respect to the performance of any duties or other projects being undertaken by them. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

g. **Amendments**. This Agreement may be amended or modified only in writing by the Parties. The RPD General Manager, in consultation with the City Attorney, may execute such amendments on behalf of RPD, provided the amendments are in the best interests of the City, do not materially increase the City's obligations or liabilities, are necessary or advisable to effectuate the purposes of the Project, and are in compliance with all applicable laws.

IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the respective dates set forth to their names.

APPROVED:

Aaron Fenton, SVP, Development Date
BXP Embarcadero Plaza LP

Phil Ginsburg, General Manager Date
Recreation and Park Department

Robbie Silver, President & CEO Date
Downtown Community Benefit District, dba
Downtown San Francisco Partnership

Sarah Dennis-Phillips, Dir of Development Date
SF Office of Economic and Workforce Development

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
Deputy City Attorney Manu Pradhan

Attachments:
Exhibit A: Project Description
Exhibit B: Preliminary Project Budget
Exhibit C: Preliminary Project Schedule
Exhibit D: Design Professional Terms
Exhibit E: Construction Terms
Exhibit F: BXPE and DSFP Insurance

EXHIBIT A: PRELIMINARY PROJECT DESCRIPTION

EXHIBIT B: PRELIMINARY PROJECT BUDGET

Embarcadero Project Budget		
EXPENSES		
Design Costs		
Landscape, Civil & Survey	$	1,980,000
Soft Cost Contingency	$	275,000
City Project Management	$	200,000
BXPE Project Management	$	45,000
Total Estimated Design Costs	**$**	**2,500,000**
Estimated Construction Costs	$	23,000,000
Project Contingency	$	1,000,000
Fundraising and Admin Costs	$	1,000,000
Phase I Total	**$**	**27,500,000**
SOURCES		
BXPE Cash and In-Kind Design Grants	$	2,500,000
Public Funds (Minimum Committment)	$	15,000,000
Private Commitment	$	10,000,000
Total Sources	**$**	**27,500,000**

EXHIBIT C: PRELIMINARY PROJECT SCHEDULE

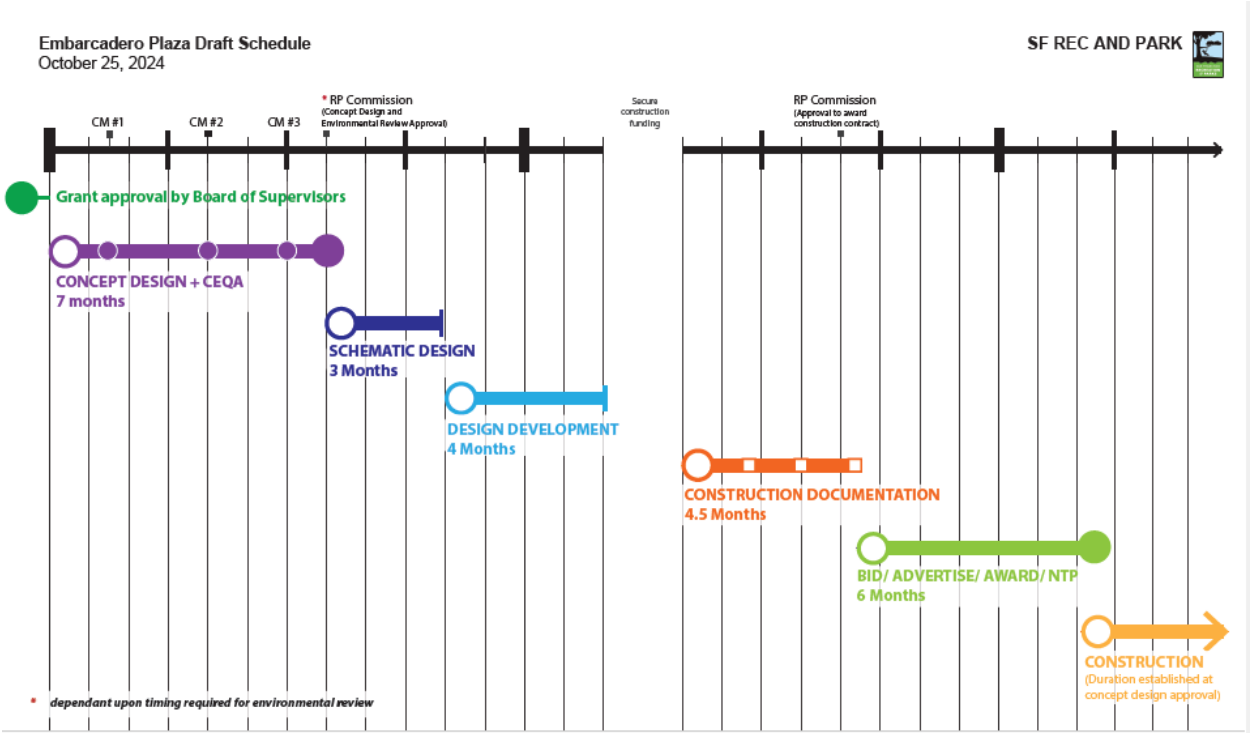

EXHIBIT D: DESIGN PROFESSIONAL REQUIRED CONTRACT TERMS

1. Code Compliance.

Consultant shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Consultant's work on the Project. Where there is an irreconcilable discrepancy between any of the above-mentioned codes and regulations, the Consultant shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs, and provide RPD with the basis for its determination. In the event of changes in codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Consultant and which result in a substantive change to the plans, the Consultant shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of complying with the changes. The Consultant shall be responsible to identify, analyze and report to the City on pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California building codes and San Francisco Building Code and other amendments.

2. Standard of Performance

The Consultant shall perform its services in accordance with the professional standard of care applicable to the design and construction of projects of similar size and complexity in the San Francisco Bay Area.

3. Insurance

Consultant must maintain in force, during the full term of its Agreement with BXPE, insurance in the following amounts and coverages:

A. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness. Consultant hereby agrees to waive subrogation which any of its insurers may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and BXPE for all work performed by the Consultant, its employees, agents and subconsultants.

B. Commercial General Liability Insurance with limits not less than $2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

C. Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

D. Professional liability insurance with limits not less than $2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

E. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees and BXPE, its Officers, Agents, and Employees.

2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

F. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

G. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

H. Should any of the required insurance, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

I. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

J. Before commencing any operations under this Agreement, Consultant shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

K. Approval of the insurance by City and/or BXPE shall not relieve or decrease the liability of Consultant hereunder.

4. Indemnity

A. Defense Obligations. Subject to California Civil Code § 2782.8 (2023), to the fullest extent permitted by law, and subject to Section 4B below, Consultant shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, reasonable attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Consultant for the proportionate percentage of defense costs exceeding Consultant's proportionate percentage of fault as determined by a Court of competent jurisdiction.

B. Indemnity Obligations. Subject to California Civil Code § 2782.8 (2023), to the fullest extent permitted by law, Consultant shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses.

C. Copyright Infringement. Consultant shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

D. Severability Clause Specific to Indemnification and/or Defense Obligations. To the extent any Court of competent jurisdiction or law invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

5. Third Party Beneficiary

The City shall be named as a third party beneficiary in the Consultant Agreement.

EXHIBIT E: CONSTRUCTION REQUIRED CONTRACT TERMS

In-Kind Grant – Project Work – Terms Applicable to BXPE:

a. **Scope of Work.** BXPE shall, using Campaign Funds and at no cost to the City, hire a Contractor to help complete the Project. The Contractor and their Scope of Work shall be subject to RPD written approval. BXPE shall exercise due care; maintain the area of the Park identified by RPD for the work (the "Permit Area") in a good, clean, safe, secure, sanitary and sightly condition; comply with applicable prevailing wage and certified payroll requirements; remove all debris and restore the Permit Area to its prior condition once the work is complete; immediately repair any and all damage to the property; and not cause nuisance or unreasonable annoyance to City or owners/occupants of neigboring property or to the public. BXPE's agreement shall ensure Contractor complies with these restrictions and shall also include the terms and conditions listed in Schedule 1, attached hereto.

b. **Coordinating Start of Work.** Before starting work, BXPE shall confirm with RPD that there are adequate Campaign Funds to complete the approved scope of work. RPD shall consult BXPE regarding an appropriate start date to be determined by RPD in its reasonable discretion. The work shall not interfere with RPD's regular work, permits, and reservations in the Park, and may not commence until RPD has authorized the start date(s) and time(s) in writing.

c. **Permission to Enter.** RPD's authorization to proceed shall constitute the grant of a revocable, personal, unassignable, non-exclusive and non-possessory privilege to Contractor to enter upon and use the area of the Park identified by RPD (the "Permit Area") for the limited purpose of completing the approved Scope of Work. This privilege shall be temporary only and shall commence once the dates are confirmed and agreed to by RPD. Without limiting any of its rights hereunder, City may revoke this permission as set forth in the Agreement, without any obligation to pay any consideration to Grantor or Contractor.

d. **Final Acceptance.** BXPE shall notify RPD once the Scope of Work is complete in accordance with the approved plans. RPD shall perform a final inspection within 10 working days of such notice. Upon RPD's inspection and decision to accept the work, RPD will, no later than 5 days from such decision to accept the work, prepare a letter of final acceptance (the "Acceptance Letter") addressed to BXPE. Upon receipt of the Acceptance Letter, BXPE and Contractor shall immediately remove all of their property and debris from the Park and shall repair, at their own cost, any damage to the Park caused by their activities in the Park.

e. **Delivery of Improvements; Transfer of Ownership.** Within 10 days of receipt of the Acceptance Letter, BXPE shall deliver the work free and clear of all liens, easements or potential claims arising from BXPE's work on the Project and shall provide RPD fully executed waivers and releases from all contractors and subcontractors of all claims against the City, its employees and agents. Upon delivery of the improvements, BXPE shall assign to the City any warranties or guaranties required by its contracts with the contractors and subcontractors. BXPE shall retain ownership of the improvements prior to delivery to RPD.

Schedule 1 – Project Work – Terms Applicable to BXPE's Contractors:

1. Exercise of Due Care.

Contractor shall exercise due care in completing the work, and shall use due care consistent with the care and skill normally exercised by licensed general contractor with experience in performing work of a similar nature, scope and complexity under like circumstances in a similar locale ("Standard of Care") at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area. Contractors shall take such soil and resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation work. Under no circumstances shall Contractors damage, harm or take any rare, threatened or endangered species on or about the Permit Area. Contractors shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to its work in the Permit Area. Contractors shall also maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition; upon completion remove all debris and restore the Permit Area to its condition immediately prior to construction, to the satisfaction of City; and immediately at its sole cost repair any and all damage to the Permit Area or property.

2. Additional Requirements.

   a. Contractor shall obtain any and all necessary City permits and comply with applicable laws including disability access laws and with required noticing procedures before closing any sidewalks.

   b. Contractor shall comply with RPD's Standard Construction Measures, and shall implement appropriate measures to ensure public safety while working in the Park, including, but not limited to, erecting safety barriers and caution signage and/or tape.

   c. Contractor shall pay its workers the prevailing rate of wage for the craft or classification of work performed, and provide certified payroll records to City on request pursuant to City-standard practices.

   d. Contractor shall adhere to Occupational Safety & Health Administration standards related to the Project.

   e. Contractor shall warrant and guarantee to the City that materials and equipment used for the Project will be first-class in quality and new, that the work will be free from defects and of the quality specified, and that the work will conform to the requirements of the contract documents.

   f. Contractor shall not construct or place any temporary or permanent structures or improvements on the Permit Area, or alter any existing structures or improvements on the Permit Area, except for the approved Scope of Work.

   g. Contractor shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.

h. Contractor shall not cause, nor allow its Agents or Invitees to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area, except for quantities of Hazardous Materials customarily used in connection with the scope of work in compliance with Applicable Laws. Contractor shall immediately notify City when it learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Contractor shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Contractor or its Agents or Invitees causes a release of Hazardous Material, Contractor shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Contractor shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.

i. Contractor shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.

3. Insurance

Contractor must maintain all of the insurance as set forth below, during the full term of its Agreement with BXPE and at all times during its activities in the Park, naming the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Contractors(s) shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall

constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Contractor's indemnification obligations under this Agreement or any of Contractor's other obligations hereunder.

a. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness. Contractor hereby agrees to waive subrogation which any of its insurers may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and BXPE for all work performed by the Contractor, its employees, agents and subcontractors.

b. Commercial General Liability Insurance with limits not less than $2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

c. Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

d. Professional liability insurance with limits not less than $2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

e. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

    i. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

f. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

g. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

h. Should any of the required insurance, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

i. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives

satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

j. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

k. Approval of the insurance by City and/or BXPE shall not relieve or decrease the liability of Contractor hereunder.

l. If a subcontractor will be used to complete any portion of this Agreement, Contractor shall ensure that its subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees, BXPE, its officers, agents and employees and the Contractor as additional insureds.

4. Indemnification

a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City and County of San Francisco, its boards and commissions, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including, but not limited to attorneys fees, directly or indirectly arising out of, connected with or resulting from the performance of the Contract. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.

b. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arises out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

c. The City shall provide Contractor with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City's and other indemnified parties' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed and in every instance, within thirty (30) days

after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified party may retain separate counsel co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other indemnified party conflict and counsel chosen by Contractor cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Contractor, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Contractor's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

i. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon the City and/or other indemnified party in connectionwith such judgment or settlement and Contractor obtains the full and complete release of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.

ii. If Contractor does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Contractor, and (ii) Contractor will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Section 3 (Indemnification).

EXHIBIT F: BXPE and DSFP INSURANCE

Each of BXPE and DSFP will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

A. Workers' Compensation, with Employer's Liability limits not less than $1,000,000 each accident.

B. Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence, $2,000,000 General Aggregate. Commercial General Liability policies shall name the City and County of San Francisco, as Additional Insureds. Such policies shall also be endorsed to state that they are the primary insurance over any other insurance available to the Additional Insureds with respect to any claims arising under the Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

C. Professional liability insurance with limits not less than $2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.